



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/816,387

04/01/2004

John A.C. Woodley

030559

9381

26285

7590

03/31/2008

KIRKPATRICK & LOCKHART PRESTON GATES ELLIS LLP
535 SMITHFIELD STREET
PITTSBURGH, PA 15222

EXAMINER

POLLOCK, GREGORY A

ART UNIT

PAPER NUMBER

4182

MAIL DATE

DELIVERY MODE

03/31/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/816,387	Applicant(s) WOODLEY, JOHN A.C.	
	Examiner GREG POLLOCK	Art Unit 4182	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 April 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|----------------------------------------------------------------------------------------|-------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11/16/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This action is responsive to the claims filed 04/01/2004.
2. Claims 1-21 have been examined.

Claim Objections

3. The specification is objected to because of the following minor informalities:
 - a. Claim 15, line 1 reads, “wherein the computing device is further for computing” should be corrected to “wherein the computing device is further used for computing” .
 - b. Claim 16, line 1 reads, “wherein the computing device is further for” should be corrected to “wherein the computing device is further used for”.

Claim Rejections - 35 USC § 101

4. 35 U.S.C. 101 reads as follows:
Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.
5. Claims 1-21 are rejected under 35 U.S.C. 101 because the claimed invention lacks patentable utility. The claimed invention claims a general utility that is applicable to a broad class of software applications and therefore lacks specific utility. The current focus of the Patent Office in regard to specific utility is to distinguish between situations where an applicant has disclosed a specific use for or application of the invention and situations where the applicant merely

indicates that the invention may prove useful without identifying with specificity why it is considered useful.

Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 1-21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Greenshields et al. (U.S. Application No. 10/672,448) in view of Dines et al. (U.S. Patent No. 6,950,806).

As per claim 1, Greenshields et al. teaches a method of guarantying a minimum cash flow for a business entity (SPV [Figure 3, element 56]) that holds at least one facility that converts a first commodity to a second commodity (Power Company [Figure 3, element 50], which is an electric power plant [¶40, lines 3-7] that converts raw fuel into electrical power), comprising:

establishing a contract between the business entity and an option grantor (the Power Distributor [Figure 3, element 52] is under contract with the SPV [Figure 3, element 52] for payments according to a the "revised PPA" ([¶40-42] where a PPA is a Power Purchase Agreement [¶12]), and where the value of each option in the strip is based on a spread between the price of the second commodity and the cost of producing the second commodity from the first commodity ([¶46]), where the price and cost are assessed based on price and cost information over the look-back period ([¶46]).

Greenshields et al. does not teach that **the contract obligates the option grantor, in exchange for a contract premium paid by the business entity to the option grantor, to pay the business entity a payment after a look-back period, when the aggregate value of one or more strips of options**

corresponding to one or more facilities subject to the contract is below a predetermined value,

Dines et al. teaches a method **wherein the contract obligates the option grantor, in exchange for a contract premium paid by the business entity to the option grantor** ([column 2, lines 46-61] and [column 4, lines 10-19]), **to pay the business entity a payment after a look-back period** (a given period of time [column 2, line 62 – column 3, line 12]), **when the aggregate value of one or more strips of options corresponding to one or more facilities subject to the contract is below a predetermined value** (minimum price [column 2, lines 46-61] and price floors [column 1, lines 15-25]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teaching of Greenshields et al. with that of Dines et al. such that a contract premium would be paid by the SPV in order to obtain strip options from the Power distributor. One skilled in the art at the time of the inventions would be motivated to use strip options because it provides the SPV with greater price certainty.

As per claim 2, the rejection of claim 1 has been addressed.

Greenshields et al. does not teach a method **wherein the aggregate value of one strip of options corresponding to one facility is equal to the sum of the values of each option in the strip for the facility.**

Dines et al. teaches a method **wherein the aggregate value of one strip of options corresponding to one facility is equal to the sum of the values of each option in the strip for the facility** (contracts are aggregated [column 5, lines 44-45]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teaching of Greenshields et al. with that of Dines et al. such that the aggregate value of one strip of options corresponding to one facility is equal to the sum of the values of each option in the strip for the facility. One skilled in the art at the time of the inventions would be motivated to aggregate the individual strips so that they can be delivered in more economically practical quantities and at acceptable frequencies.

As per claim 3, the rejection of claim 1 has been addressed.

Greenshields et al. does not teach a method **wherein the aggregate value of one strip of options corresponding to one facility is related to the sum of the values of each option in the strip for the facility.**

Art Unit: 4182

Dines et al. teaches a method **wherein the aggregate value of one strip of options corresponding to one facility is related to the sum of the values of each option in the strip for the facility** ([column 4, lines 36-46]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teaching of Greenshields et al. with that of Dines et al. such that the aggregate value of one strip of options corresponding to one facility is equal to the sum of the values of each option in the strip for the facility. One skilled in the art at the time of the inventions would be motivated to aggregate values since in practice, the option grantor, may find it difficult to attain individual options trades. The option grantor would have to take the time and effort to sell a portion of the commodity every day. This is generally not practical due to time demands and the fact that trading increments in organized markets are unlikely to exactly match the necessary quantity per averaging period. The typical size range for a seller may not support the necessary daily activity and trading increments.

As per claim 4, the rejection of claim 1 has been addressed.

Greenshields et al. teaches a method **wherein the price and cost information are price indices for the first and second commodity specified in the contract** ([¶46]).

As per claim 5, the rejection of claim 1 has been addressed.

Greenshields et al. teaches a method **further comprising with proceeds from a financing** (the SPV [Figure 3, element 56] sells bonds to Bond Holders [Figure 3, element 62], in the form of debt securities [¶47-48] to raise required capital for the purchase of the original PPA.).

Greenshields et al. does not teach a method where **the business entity pays the premium to the option grantor**.

Dines et al. teaches a method where **the business entity pays the premium to the option grantor** ([column 2, lines 46-61] and [column 4, lines 10-19]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teaching of Greenshields et al. with that of Dines et al. such that the business entity pays the premium to the option grantor. One skilled in the art at the time of the inventions would be motivated to combine the teachings since the premium provides some degree of fixed compensation against excessive drops in average price. Thus, the premium is earned in exchange for placing a limit on each of the observation point prices.

As per claim 6, the rejection of claim 5 has been addressed.

Art Unit: 4182

Greenshields et al. teaches a method **wherein the financing includes a debt offering** (the SPV [Figure 3, element 56] sells bonds to Bond Holders [Figure 3, element 62], in the form of debt securities [¶47-48] to raise required capital for the purchase of the original PPA.).

As per claim 7, the rejection of claim 1 has been addressed.
Greenshields et al. teaches a method **wherein the look-back period is selected from the group consisting of six months and one year** (any specified time period [¶12], [¶17, lines 15-20], and [¶41]).

As per claim 8, the rejection of claim 1 has been addressed.
Greenshields et al. teaches a method **further comprising the business entity and the option grantor establishing a second contract covering a successive look-back period** (contracts are periodic [¶46-47] and [¶61] indicating that a second successive look-back period is established.).

As per claim 9, the rejection of claim 1 has been addressed.
Greenshields et al. teaches a method **further comprising a third-party guarantor guarantying payment obligations of the option grantor under the contract** (the Trust [Figure 3, element 66] guarantees payment to the SPV [¶52-53]).

As per claim 10, All of the limits of Claim 10 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 11, The rejection of claim 10 has been addressed.
All of the limits of Claim 11 have been previously addressed in Claim 9 and is therefore rejected using the same prior art and rationale.

As per claim 12, Greenshields et al. teaches **a system, comprising a computing device** ([Figure 6, element 102] and [¶85, lines 16-17]).

All of the remaining limits of Claim 12 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 13, the rejection of claim 12 has been addressed.
All of the limits of Claim 13 have been previously addressed in Claim 2 and is therefore rejected using the same prior art and rationale.

As per claim 14, the rejection of claim 12 has been addressed.
All of the limits of Claim 14 have been previously addressed in Claim 3 and is therefore rejected using the same prior art and rationale.

As per claim 15, the rejection of claim 12 has been addressed.

Art Unit: 4182

Greenshields et al. does not teach a system **wherein the computing device is further used for computing the payment amount when it is determined that the option grantor is required to pay the business entity.**

Dines et al. teaches a system **wherein the computing device is further used for computing the payment amount when it is determined that the option grantor is required to pay the business entity** ([column 5, lines 55-57]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teaching of Greenshields et al. with that of Dines et al. such that a computing device is used for computing the payment amount when it is determined that the option grantor is required to pay the business entity. One skilled in the art at the time of the inventions would be motivated to use a computing device to automate the process making the computation faster and more reliable.

As per claim 16, the rejection of claim 15 has been addressed.

Greenshields et al. does not teach a system **wherein the computing device is further for electronically transferring the payment from an account of the option grantor to an account of the business entity when it is determined that the option grantor is required to pay the business entity.**

Dines et al. teaches a system **wherein the computing device is further for electronically transferring the payment from an account of the option grantor to an account of the business entity when it is determined that the option grantor is required to pay the business entity** (transactions transfers [Abstract, lines 1-3] using a computer [column 5, lines 38-40] and [column 8, lines 12-19]).

It would have been obvious to one of ordinary skill in the art at the time of the invention to have combined the teaching of Greenshields et al. with that of Dines et al. such that a computing device is used for computing for electronically transferring the payment from an account of the option grantor to an account of the business entity when it is determined that the option grantor is required to pay the business entity. One skilled in the art at the time of the inventions would be motivated to use a computing device to automate the process making the transaction faster and more reliable.

As per claim 17, Greenshields et al. teaches **a computer readable medium** ([¶85, lines 20-27]).

All of the remaining limits of Claim 17 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

Art Unit: 4182

As per claim 18, the rejection of claim 17 has been addressed.

All of the limits of Claim 18 have been previously addressed in Claim 15 and is therefore rejected using the same prior art and rationale.

As per claim 19, the rejection of claim 18 has been addressed.

All of the limits of Claim 19 have been previously addressed in Claim 16 and is therefore rejected using the same prior art and rationale.

As per claim 20, Greenshields et al. teaches **a method of guarantying a minimum cash flow for a business entity** (SPV [Figure 3, element 56]) **that holds at least one facility that converts a first commodity to a second commodity** (Power Company [Figure 3, element 50], which is an electric power plant [¶40, lines 3-7] that converts raw fuel into electrical power), **comprising:**

the business entity entering into an offtake contract with an offtaker (the Power Distributor [Figure 3, element 52] is under contract with the SPV [Figure 3, element 52] for payments according to a the “revised PPA” ([¶40-42] where a PPA is a Power Purchase Agreement [¶12]), **wherein the offtake contract obligates the offtaker to pay the business entity for output of the second commodity** (fixed periodic payments [¶12]) **based on at least one of a spot market price** (market price [¶72]) **and an index price for the second commodity** (index-based price [¶25, lines 11-15]);

All of the remaining limits of Claim 20 have been previously addressed in Claim 1 and is therefore rejected using the same prior art and rationale.

As per claim 21, the rejection of claim 20 has been addressed.

Greenshields et al. teaches **a method herein the offtake contract obligates the offtaker to pay the business entity for output of the second commodity based on a function of the price of the first and second commodities** ([¶46] and [¶72]).

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.
 - Kumar et al. (US Application: 10/693277) – teaches a method related to a transaction structure for financing the sale of a commodity. The method includes the first business entity offering debt securities to investors,

Art Unit: 4182

establishing a purchase agreement between the first business entity and a purchaser, wherein the purchase agreement obligates the purchaser to purchase the volumes of the commodity from the first business entity, and establishing a swap agreement between the purchaser and a party, wherein the swap agreement obligates the purchaser to pay the party an amount equal to the price at which the purchase sells the volumes of the commodity in the open market and obligates the party to pay the purchaser a fixed price.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pollock whose telephone number is 571 270-1465. The examiner can normally be reached on 7:30 AM - 6 PM, Mon-Thu Eastern Time.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thu Nguyen can be reached on 571 272-6967. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 4182

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GAP

3/24/2008

/Gregory Pollock/
Examiner, Art Unit 4182

Gregory A. Pollock

/Thu Nguyen/
Supervisory Patent Examiner, Art Unit 4182